IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE SEVENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SMT JUSTICE T.MEENA KUMARI

and
THE HON'BLE MR JUSTICE P.LAKSHMANA REDDY

WRIT APPEAL NO : 993 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 20/01/2005 in WP No. 20368 OF 2004 on the file of the High Court.)

Between:

1 The Chief Security Commissioner, Railway Protection Force,
South Central Railway, Rail Nilayam, Secunderabad.
2 Sr. Divisional Security Commissioner, Railway Protection

Force, South Central Railway, Vijayawada.

..... APPELLANTS

AND

P. Nanda Kumar, S/o. P.V. Subbaiah,
R/o. Rly.Qtrs. No.102/B, Gudur, Nellore District.

.....RESPONDENT

Counsel for the Appellants: MR.A.KRISHNAM RAJU

Counsel for the Respondent : MR.J.M.NAIDU

The Court made the following :

JUDGMENT: (Per the Hon'ble Smt Justice T.Meena Kumari)

The writ appeal has been filed by the appellants against the order passed by a learned single Judge of this Court in W.P.No.20368 of 2004, dated 20-01-2005.

The said writ petition has been filed by the respondent challenging the action of the 1st appellant in rejecting promotion to him to the post of Sub Inspector Protection Force under restructuring scheme vide Proc.No.X/P.529/2/IX dated 16-6-2004.

The 1st appellant passed the order dated 16.6.2004 stating that the respondent was medically decategorised and declared unfit w.e.f. 16.2.2004 prior to SIPF selections held on 19.2.2004 and 20.2.2004. It is further stated that as on the date of selection, the respondent is not on the rolls of RPF. Hence, he could not be directed for SIPF selection by Sr.DSC/BZA, as SIPF post is a selection post.

The learned Single Judge after going into the merits of the case has set aside the order dated 16.6.2004, holding that the appellants have not followed the provisions of Section 47 (2) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short **'the Act'**) and directed the 1st appellant to place the matter before the next departmental promotion committee for promotion as Sub Inspector without adverting to the medical certificate No.132 dated 16.2.2004 issued by the Chief Medical Superintendent, Vijayawada. The learned Judge further held that the departmental promotion committee shall have to consider the promotion of the respondent as Sub Inspector and if he is not found suitable for selection as Sub Inspector, he shall be shifted to some other post with the same pay-

scale and service benefits as required under Section 47 of the Act. Aggrieved by the same, the present writ appeal has been filed.

The learned counsel appearing for the appellants has contended that in view of the fact that the respondent has been found medically unfit w.e.f. 16.2.2004 itself, he has been removed from the rolls of RPF and that he is not entitled for promotion to the post of Sub Inspector. The learned counsel submitted that the respondent has been placed in supernumerary post in the cadre of ASI to which he is entitled to.

Section 47 (2) of the Act reads as follows:

> "No promotion shall be denied to a person merely on the ground of his disability:
>
> Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

A perusal of the section goes to show that no person shall be denied promotion on the ground of disability.

It is an undisputed fact that the respondent is in service. Even though he was found medically unfit, the authorities cannot act against the provisions of the Act. There is no material placed before this Court that the appellants have followed the provisions of Section 47 (2) of the Act. In the absence of the same, we do not find any reason to interfere with the order of the learned Single Judge.

Accordingly, the writ appeal is dismissed. However, the appellants are directed to implement the order of the learned Single Judge dated 20-1-2005 in W.P.No.20368 of 2004 within a period of two months from the date of receipt of a copy of this order.

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(T.MEENA KUMARI,J)

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(P.LAKSHMANA REDDY,J)

7-6-2005

rkk/lvl

Copy to

1 The Chief Security Commissioner, Railway Protection Force,
South Central Railway, Rail Nilayam, Secunderabad.
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Force, South Central Railway, Vijayawada.

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